

**Remarks**

**Summary of Office Action**

Claims 111, 119, and 171-183 are pending in this application.

Claims 111, 171-173, 175, 176, and 180 have been objected to based on informalities. Claim 111 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 111, 119, and 171-183 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over GB 2232400B to Johnson ("Johnson") in view of Cassidy (San Jose Mercury News, Morning Ed., Final Science and Medicine, page 1C) ("Cassidy"), Phanny ([www.mit.edu/~mbarker/sum97/awar970630.txt](http://www.mit.edu/~mbarker/sum97/awar970630.txt), June 30, 1997) ("Phanny"), and U.S. Patent No. 5,966,966 to Botsaris ("Botsaris").

**Applicants' Reply**

Applicants' attorney would like to thank the Examiner for the courtesy he extended during the interview which took place on January 5, 2007 for the above-identified patent application. The Examiner's helpful comments have been followed as described below in order to move this case forward.

In this Response, Applicants have amended claims 111, 171, 172, 175, and 180 and address the Examiner's objections and rejections. Support for the amendments to the claims can be found throughout the application. Accordingly, no new matter has been added. Amendments to the claims are being made solely to expedite prosecution and do not constitute an acquiescence to any of the Examiner's objections or rejections. Applicants' silence with regard to the Examiner's rejections of the dependent claims

constitutes a recognition by the Applicants that the rejections are moot based on the Applicants' Amendment and Remarks relative to the independent claim from which the dependent claims depend. Applicants reserve the option to further prosecute the same or similar claims in the present or a subsequent Application.

### Objections

The Examiner objected to claims 111, 171-173, 175, 176, and 180 based on informalities. Applicants have amended claims 111, 171, 172, 175, and 180 as suggested by the Examiner. Therefore, Applicants kindly request the Examiner remove the objection.

### Rejection Under 35 U.S.C. § 112

The Examiner rejected claim 111 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner stated that claim 111 was indefinite because there was no antecedent basis for "said dispensed beverage." Applicants have amended the claim to recite "said beverage," which has a proper antecedent basis in the claim. Therefore, Applicants kindly ask the Examiner to remove this rejection.

Applicants respectfully submit that at least page 2, lines 16-22, page 4, lines 1-4, page 8, lines 5-11 and 13-19, page 9, lines 17-25, and page 22, lines 1-8 of the specification provide support for "separate and individual ice crystals in said vessel from a portion, but not all, of said water content of said beverage," as amended claim 111 now recites.

Rejection Of Independent Claim 111 Based on 35 U.S.C. § 103

The Examiner rejected claim 111 under 35 U.S.C. § 103(a) as allegedly being obvious over Johnson in view of Cassidy, Phanny, and Botsaris. In order for the Office Action to establish a prima facie case of obviousness, at least three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as proposed by the Office Action. Second, there must be a reasonable expectation of success. Third, the prior art references must disclose or suggest all the claim limitations. MPEP 2143 (emphasis added). Applicants respectfully traverse.

1. The References Are Not Properly Combined

Applicants respectfully submit that the references of Johnson, Cassidy, Phanny, and Botsaris are not properly combined. Johnson describes a beer dispensing system for delivering beer from a beer barrel to a tap, such that beer may be dispensed into a vessel. Cassidy, on the other hand, describes the undesirable phenomenon in which a supercooled beer is opened and suddenly freezes solid. Cassidy teaches that the formation of ice is problematic. (Cassidy, Page 3, Line 30: "It's amazing. The whole bloody thing freezes throughout.") Applicants respectfully submit, therefore, that one of ordinary skill in the art at the time of the invention would not have been motivated to modify the beer dispensing system of Johnson to cool the beer to a temperature below the freezing point of water because Cassidy teaches that such dispensed beer would become frozen throughout vessel, which is problematic and undesirable. Therefore, Johnson and Cassidy are not properly combined, and one of skill in the art looking at the references

would not have believed there would be a reasonable expectation of success in making the combination.

Further, Botsaris describes a process for “freeze concentration” of a liquid using ultrasonic nucleation. As such, Botsaris describes removing ice during processing, rather than incorporating ice into the final product. Therefore, there is no motivation to combine the references of Johnson, Cassidy, and Botsaris.

Assuming, *arguendo*, that the combination of Johnson, Cassidy, Phanny, and Botsaris was proper, the combination would still fail to disclose or suggest each element of claim 111, as amended. Applicants independent Claim 111, is directed to a method of serving draught alcoholic beverage in an open-topped vessel. Among other things, independent claim 111 recites “subjecting said cooled beverage to ultrasound signals, forming a head of foam on the beverage, forming a plurality of separate and individual ice crystals in said vessel from a portion, but not all, of said water content of said beverage, and wherein said ice crystals extend downward away from the head.” The cited prior art fails to disclose or suggest, a head overlying ice crystals, separate and individual ice crystals, that such ice comprises a portion, but not all, of the beverage, and subjecting the final product to ultrasound (rather than using ultrasound to remove material from an initial product). Therefore, Applicants respectfully submit that claim 111 is allowable for at least this additional reason.

Rejections Of Dependent Claims 119 and 171-183 Based on 35 U.S.C. § 103

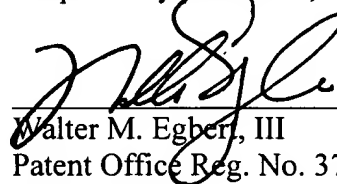
The Examiner rejected claims 119 and 171-183 under 35 U.S.C. § 103(a) as allegedly being obvious over Johnson in view of Cassidy, Phanny, and Botsaris. Since

claim 111 is allowable (as discussed above), claims 119 and 171-183 depending therefrom are also allowable.

**Conclusion**

Applicants respectfully submit that this application is now in condition for allowance. Reconsideration and prompt allowance of which are respectfully requested. If there are any remaining issues to be resolved, Applicants respectfully request that the Examiner kindly contact the undersigned attorney for early resolution.

Respectfully submitted,



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